

EXECUTIVE OFFICER'S SUMMARY REPORT
1:00 PM, AUGUST 26, 2003
REGIONAL WATER QUALITY CONTROL BOARD
HEARING ROOM
5550 SKYLANE BLVD., SUITE A
SANTA ROSA, CALIFORNIA

ITEM: 3

SUBJECT: Humboldt Watersheds Independent Scientific Review Panel Phase II Report

Introduction

This report provides the background information leading to the development of the Humboldt Watersheds Independent Scientific Review Panel's (Panel) Phase II Report (Phase II Report) and describes the intent and structure of the public workshop to be held by the North Coast Region Water Quality Control Board (Regional Water Board) on August 26, 2003. The purpose of the workshop is to provide an opportunity for members of the Panel to present a summary of the Phase II Report, and to answer questions from the Regional Water Board and the public on the report. No Regional Water Board actions are proposed for the Workshop, but the Regional Water Board may elect to direct staff to prepare an agenda item for action at a later date.

Background

In 2001, the State Water Resources Control Board (State Water Board) received a petition filed by the Humboldt Watershed Council, Jesse Noell, and Ken Miller (Petitioners) regarding sediment impairment and timber operations in five watersheds in Humboldt County. The watersheds listed in the petition are Elk River and Freshwater Creek, tributaries to Humboldt Bay, and Jordan, Stitz, and Bear Creeks, tributaries to the lower Eel River. In January of 2002, the State Water Board issued Water Quality Order (WQO) No. 2002-0004 in response to the petition, directing the Regional Water Board to take several actions including remanding the issues raised by the Petitioners back to the Regional Water Board. The Order also concluded that it was desirable to expedite the establishment of Total Maximum Daily Loads (TMDLs) for the five impaired watersheds, including undertaking additional actions to ensure that the TMDLs are implemented.

On February 28, 2002, the Regional Water Board reviewed the State Water Board Order and directed staff to, in part, (1) expedite TMDL development in the watersheds, (2) pursue water quality monitoring, and (3) require development and submission of technical information regarding these watersheds for application in both short and long-term regulatory activities. The Regional Water Board also directed the Executive Officer to pursue mediation among the parties affected in these watersheds, hoping to find a solution that, as a product of consensus building, would be able to be implemented in the watersheds in a relatively short time frame and would be collectively accepted.

In response to the Regional Water Board's February 2002 direction, Regional Water Board staff accelerated TMDL scheduling and monitoring requirements in the five watersheds. In April, 2002, the Regional Water Board conducted an adjudicatory hearing in Eureka to consider whether to direct the Executive Officer to require submission of reports of waste discharge in the affected watersheds. At this hearing, the Regional Water Board voted, in part, to encourage

ongoing efforts at mediation. A Regional Water Board sub-committee consisting of Richard Grundy, Dina Moore, and Bill Massey was formed to advise and assist the Executive Officer in the mediation efforts.

After an extensive selection process, the Regional Water Board engaged CONCUR, Inc., (CONCUR), a provider of alternative dispute resolution services, to provide the mediation and facilitation services required to achieve the Regional Water Board direction. CONCUR began interviewing involved parties, and participated in a public meeting on May 7, 2002, to explain the scope and process of the mediation.

At the May 16-17, 2002, Regional Water Board meeting in Eureka, the Executive Officer reported to the Regional Water Board on staff efforts related to TMDL development in the five watersheds. In addition, CONCUR reported on the mediation efforts. The focus of the mediation efforts was aimed at identifying early abatement actions which could be taken prior to completion of the TMDLs. The mediation proceeded with CONCUR and the parties establishing a Convening Committee to determine actions which could be taken in the short-term (defined as before adoption of a TMDL), and in the long-term to positively affect the sediment-impaired watersheds. To assist in accomplishing this goal, the Convening Committee considered two tasks: developing questions for an independent scientific review panel to consider, and creating criteria for the selection and engagement of such a scientific review panel.

The Regional Water Board noted in the various public meetings and hearings on the underlying matters that there were numerous points of dispute between Regional Water Board staff, the California Department of Forestry (CDF), Pacific Lumber Company (PALCO), residents, other interested groups, and their various scientific advisors on the underlying causes of, and strategies to remedy, the sedimentation problems in the affected watersheds. The goal in engaging the scientific review panel was to recruit an un-biased panel of nationally recognized scientists to help resolve and articulate some of the discrepancies between the various analyses and conclusions reached by the different parties. This information would then hopefully yield a set of findings and methodologies that could form the foundation of a solution that is both reasonably implementable in the short term and sustainable in the long term.

At the June 27, 2002, Regional Water Board meeting in Ukiah, the Executive Officer reported to the Regional Water Board on staff efforts related to the mediation efforts. Staff reported that after meeting weekly (and sometimes twice-per-week) for four weeks, the parties had come to an impasse, and mediation was formally suspended.

The impasse was reached over the issue of whether the scientific review panel should be asked to evaluate the effects of rates of timber harvest on sediment yield. By group design and consensus, the Convening Committee needed to reach consensus under the mediation process in order to proceed with formulation of questions to be posed to the scientific review panel. PALCO had informed the Convening Committee that they did not agree with the scientific review panel addressing the rate-of-harvest question, either directly in response to a formal question or as a result of their independent deliberations and findings. A consensus could therefore not be reached.

In response to the impasse, the Regional Water Board directed staff to proceed with convening a scientific review panel and to develop questions for their evaluation, without being constrained by disagreement between the Convening Committee members regarding what specific questions or information the panel should consider or what remedies the panel might develop. The Regional Water Board further directed staff to convert the mediation process into a facilitated

stakeholder advisory process, wherein no one party could veto any idea or issue, leaving the decision of what questions should be addressed by the scientific review panel to the judgment of Regional Water Board staff after consultation with the stakeholders. The Regional Water Board directed that the stakeholder advisory process and scientific review panel selection process be conducted as quickly as possible, with a request for a preliminary report from the scientific review panel by September 2002.

The Regional Water Board June 27, 2002 direction was expressed as an unanimously approved five-part motion, which stated:

1. Accept the report from the Convening Committee and express appreciation for their efforts to date.
2. Direct staff to initiate a facilitated scientific review process and a facilitated watershed-working group.
3. Direct staff to invite the members of the existing Convening Committee and representatives from Elk River to assist staff in finalizing an initial set of terms of reference and to assist in the selection of an Independent Scientific Review Panel, within 2-3 weeks, for the purpose of addressing any actions that can be initiated in the short term, in all five watersheds.
4. Direct staff to expand the existing Convening Committee to a facilitated watershed working group to make recommendations regarding all water quality issues and actions in all five watersheds, including identifying other issues to be referred to the Independent Scientific Review Panel.
5. The Regional Water Board recognizes that their Executive Officer has existing delegated authority to take any other actions that she deems appropriate.

After receiving input from the Convening Committee plus other interested stakeholders and Habitat Conservation Plan (HCP) signatory agencies, the Phase I Terms of Reference (TOR) was developed and finalized by Regional Water Board staff and CONCUR on August 6, 2002. At the same time, staff worked with CONCUR to identify and contact the members under consideration for the Panel. Members of the Convening Committee were invited to propose selection criteria as well as potential candidates for the Panel. They were then asked to offer feedback on the suitability of candidates based on the following jointly developed, consensus-based selection criteria outlined in the TOR: 1) technical capability in their respective disciplines plus an ability to work across disciplines; 2) objectivity, as reflected by their willingness and ability to integrate diverse viewpoints; 3) ability to work collaboratively; 4) track record of science advising for environmental decision-making; 5) availability; 6) experience evaluating cumulative watershed effects in a forested setting; 7) proven track record of meeting deadlines; 8) experience with practical application; and 9) broad acceptability by the stakeholders.

By Regional Water Board direction, the final selection of the panel members was to be the responsibility of the Regional Water Board staff. As part of their ongoing mediation efforts, the Convening Committee members developed a list of panel candidates who would meet the above criteria. The list was lengthy, and many of the candidates were dismissed outright from further consideration because of past contacts with some of the parties involved in these matters. While staff fully recognized that all the candidates proposed for consideration are professionals and could be objective and non-biased, staff endeavored to avoid any appearance of bias as a result

of a candidate's prior involvement with any stakeholder or interest group. In some cases, representatives of residents and environmental groups rejected a candidate, and in some cases representatives of PALCO rejected a candidate. PALCO did not object to several of the seven final Panelists, did object to one, and did not express a position on the others. PALCO's and other stakeholders' stated objections were seriously considered, but staff ultimately determined that the membership of the Panel was appropriate, represented considerable expertise in the needed disciplines, and would result in unbiased and independent deliberations. In the end, staff selected candidates with sound understanding in Hydrology, Hydraulics and Fluvial Geomorphology, Aquatic Ecology/Fisheries Biology, Civil Engineering/Water Quality, Geotechnical/Slope Stability, Restoration Ecology, and Forestry/Silviculture, even where the Convening Committee did not unanimously endorse the candidate. The Panel was officially appointed on August 10, 2002, and began communication and deliberations by email and conference calls during the August - October 2002, time frame.

CONCUR was responsible for the structure, interactions and work efforts of the Panel. Consistent with the Regional Water Board's desire to ensure the Panel was fully independent in its substantive analysis and deliberation, Regional Water Board staff's interaction with the Panel was limited to arranging payment for services rendered, providing technical documents and maps as background information, locating and distributing other documents at the Panel's request, assisting in scheduling the site visit, answering specific questions presented by the Panel, and providing other logistical support. Regional Water Board staff did not receive any pre-review drafts and consequently did not provide comment on any portion of the Panel's report. Staff did not screen or otherwise modify any of the comments from the Panel.

Because of licensing issues raised during Phase I, Regional Water Board staff sent letters (Attachment 2) to the California Board of Forestry and Fire Protection Professional Foresters Registration, the Board for Professional Engineers and Land Surveyors, and the Board of Geologists and Geophysicists to solicit their determination if the activities described in the Phase II TOR would constitute the practice of their respective fields. The Board of Geologists and Geophysicists submitted a letter (Attachment 3) stating that the activities would in fact constitute the practice of geology in the State of California. Responses from the other two licensing boards had not been received as of this writing.

To address this issue and to ensure that the appropriate licensure was in place prior to release of the Phase II Report to the public (and consistent with the approach used for Phase I), Regional Water Board staff with the necessary licenses or registration issued by the State of California will review the Phase II Report. After a thorough review, Regional Water Board staff will determine whether the Report investigated the questions posed to the Panel in the TOR in a manner consistent with the State of California professional codes for the respective disciplines (i.e. registered professional forester, certified engineering geologist and professional engineer). If Regional Water Board staff makes the determination that the Phase II Report relied on and employed techniques in accordance with practices generally accepted by other scientists, engineers, and foresters practicing under similar conditions in California, then Regional Water Board staff will prepare, stamp a memorandum to the Regional Water Board Executive Officer providing the necessary certification. This memorandum would be included as an attachment or appendix to the Phase II Report to ensure that the appropriate stamps (e.g. licensee name, number and signature) remain with the Phase II Report to address the licensing agencies' concerns.

On December 27, 2002 Regional Water Board staff received a pre-release copy of the "Final Report on Sediment Impairment and Effects on Beneficial Uses of the Elk River and Stitz, Bear,

Jordan and Freshwater Creeks” (Phase I Report) prepared by the Humboldt Watersheds Independent Scientific Review Panel. The Phase I Report was distributed to a wide list of interested parties on January 7, 2003. The Phase I Report was also posted on the Regional Water Board web page at <http://www.swrcb.ca.gov/rwqcb1/> under the January 2003 agenda heading.

The Phase I Report was presented to the Regional Water Board and the public at the January 23-24, 2003 Board meeting. Following a lengthy discussion, the Regional Water Board provided guidance to staff regarding the future direction of the Scientific Review Panel process undertaken for the five Humboldt County watersheds. The Board’s guidance was expressed in five motions directing staff to undertake specific actions. The five motions are summarized below:

1. Formally petition the Board of Forestry to prepare "sensitive watersheds" nominations under section 916.8 of the Forest Practice Rules for the five watersheds.
2. Gather or require submission of data needed to allow staff to refine the Empirical Sediment Budget (Reid) and the Modeled Sediment Budget (O'Connor, 2000).
3. Work with Dr. Twiss to assist Regional Water Board staff on development of a Geographic Information System database and digital library.
4. Collaborate with HCP signatory agencies for potential mechanisms to use the HCP in achieving some of the water quality requirements.
5. Work with the facilitated working group and CONCUR, Inc. to frame the next TOR for Phase II of the Panel.

One suggestion for the Phase II effort discussed at the Regional Water Board meeting was to include a review of the HCP and existing documents to determine their effect on achieving water quality-related protection measures. The Regional Water Board directed staff to solicit input from the working group, craft a draft Terms of Reference with CONCUR and report back to the Regional Water Board at the February Meeting.

The Panel submitted a memorandum, on February 11, 2003, providing suggestions for a Phase II review process. In their memorandum the Panel provided comments on ways to implement the Regional Water Board motions, suggested questions for a Phase II TOR and outlined possible structures for future presentations to ensure full scientific debate.

In response to the Regional Water Board’s direction, staff hosted a public meeting in Eureka on February 13, 2003, to solicit comments from the interested stakeholders. Approximately 60 people attended the meeting and about 35 suggestions for issues to address under Phase II of the Scientific Review Panel process were recorded. Following the meeting, PALCO, the California Department of Fish and Game and Dr. Ken Miller submitted written comments.

Following the public meeting and based on guidance from the Regional Water Board, advice from the Panel, and suggestions from the public, staff drafted a set of potential questions for the Regional Water Board’s considerations. The questions reflected Regional Water Board staff’s analysis of the public comments received to date. Due to the considerable number of suggested questions and the existing budget, Regional Water Board staff developed a series of questions which reflected the majority of the stakeholders and the Regional Water Board’s concerns. It was apparent that due to budgetary constraints not all the questions compiled by Regional Water

Board staff could be evaluated by the Panel under the existing Phase II budget.

At the February 27, 2003 Regional Water Board meeting, staff presented the Regional Water Board with five potential options for questions to be contained in a Phase II TOR. These questions were based on: direction from the Regional Water Board; comments from the Panel to the Executive Officer, public comments as expressed at the February 13, 2003 public meeting; and written comments received prior to the Board meeting. The suggested questions included 1) review of the HCP, 2) review of the Freshwater Creek Watershed Analysis, 3) provide GIS input to Regional Water Board staff, 4) evaluate the "Dunne Report," and 5) hold a one-day technical workshop. Staff also included a recommended series of next steps developed to ensure the language contained in the final Phase II TOR meets the Regional Water Board's objectives.

Following Regional Water Board staff's presentation, Dr. Scott McCreary from CONCUR, presented the Panel's view on the suggested questions, format for a Phase II deliberation, and the scope of work relative to the remaining budget.

Following the Regional Water Board direction on February 27, 2003, staff worked with CONCUR, to prepare a Preliminary Draft Phase II TOR. The Preliminary Draft Phase II TOR was presented at the March 27, 2003 Board meeting. At that time, the Preliminary Draft Phase II TOR was considered a work in process with revisions based on comments received up to and through the March Board meeting. Based on discussion with the public and stakeholders and following direction from the Regional Water Board, staff and CONCUR finalized the Phase II TOR, dated April 3, 2003 (Attachment 1).

The Phase II tasks include in part:

- a. Examine the cause and effect relationship linking protective measures undertaken through the HCP/THP process and the actions needed to ensure protection of water quality, including clear discussion of the logic of the relationship.
- b. Evaluate whether a specific rate of recovery of the beneficial uses of water, as identified in the Water Quality Control Plan for the North Coast Region, can be determined, as this determination will be needed along with the timeframe for recovery, to allow appropriate load allocations through the TMDL process.
- c. Provided comment on the degree to the Regional Water Board can rely on the HCP measures and the corresponding watershed analysis/adaptive management process to protect and restore water quality and abate nuisance flooding conditions in the five watersheds over selected periods of time.
- d. To the extent resources allow, evaluate the degree to which the recommendations presented in the Dunne Report No. 46 are appropriate for the Five Watersheds, and determine how these recommendations might be implemented over short, intermediate and long term time frames.

To address these questions, the Panel solicited input from interested agencies and private parties regarding what documents the Panel should consider in this effort. Approximately fifty documents were submitted from a variety of stakeholders including resource agencies (California Department of Forestry, California Department of Fish and Game, National Marine Fisheries Service, the California Geological Survey, State Parks, and Regional Water Board staff), watershed groups, and interested individuals.

The Panel then convened a meeting (in which six of the seven panelists participated) in Eureka on May 5, 2003. At this meeting, the panel had extensive dialogue with, took information and heard presentations from various government agencies such as the California Department of Forestry, California Department of Fish and Game, and the California Geological Survey, as well as federal agencies such as National Marine Fisheries Service, landowners, and other watershed scientists on various issues related to the Phase II TOR. The May 5th meeting had extensive sharing of information and resulting in a productive discussion between the Panel and other participants at the meeting. Following the meeting, the Panel continued their deliberations and report preparation through mid-summer, relying on CONCUR's services for coordination.

The Panel's Phase II report detailing their deliberate approach and findings will be placed at the Regional Water Board web page at: <http://www.swrcb.ca.gov/rwqcb1/> as soon as it is available. It will be located under the August 2003 agenda heading. It is anticipated that the report will be available by August 13, 2003.

On August 26, 2003, the Regional Water Board will conduct a public workshop at the Regional Water Board Office in Santa Rosa to discuss the Phase II Report. Several of the panel members will be on hand to present a summary of the Phase II Report and engage in question, answer and discussion with the Regional Water Board.

To ensure that questions posed by members of the public and agencies can receive consideration by the full panel, written comments are being solicited prior to the workshop. These questions will be submitted to CONCUR who will provide the Panel an opportunity to discuss and prepare responses, as appropriate. The submission of written questions at the workshop will also ensure that as many question as possible can be posed to the Panel members present at the workshop.

No actions will be taken by the Regional Water Board at this workshop. Additional comments regarding the Panel Phase II Report or possible subsequent regulatory actions will continue to be accepted in writing during and after the workshop.

PRELIMINARY STAFF
RECOMMENDATION:

This is an information item, not an action item.